

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEVONNE LAMAR MARSH,

Defendant-Appellant.

UNPUBLISHED

March 18, 2003

No. 239339

Wayne Circuit Court

LC No. 01-006266-01

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right from a nonjury conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), for which he was sentenced to three years' probation with the first four months in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The elements of the crime charged are that (1) the defendant knowingly possessed a controlled substance, (2) the substance was cocaine, and (3) the substance was in a mixture that weighed less than twenty-five grams. MCL 333.7403(2)(a)(v); CJI2d 12.5.

"Possession is a term that 'signifies dominion or right of control over the drug with knowledge of its presence and character.'" *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). The defendant need not own or have actual physical possession of the substance to be found guilty of possession; constructive possession is sufficient. *People v Wolfe*, 440 Mich 508, 519-520; 489

NW2d 748 (1992), amended 441 Mich 1201 (1992). Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence. *Id.* at 520. Possession may be proved by circumstantial evidence and any reasonable inferences drawn therefrom. *Nunez, supra*.

The officers testified that they did not have any cocaine themselves or in their car, which had been searched after transporting another arrestee. Defendant was seen fidgeting and moving his hands around behind his back during transport and a bag of cocaine was found wedged between the seat cushions where he had been sitting. One could reasonably infer from such evidence that the cocaine belonged to defendant. Thus, the evidence was sufficient to prove possession. *People v Harrington*, 396 Mich 33, 49; 238 NW2d 20 (1976).

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage